

The Initial Steps towards the New Code of Civil Procedure in Hungary

In the spring of 2013 – with Governmental Resolution No. 1267/2013 (V. 17.) on the Codification of Civil Procedural Law (the “**Governmental Resolution**”) the Government of Hungary launched the review process of the Code of Civil Procedure of 1952 currently in force. The Governmental Resolution orders the codification of a new Code of Civil Procedure, which satisfies the requirements of international standards regarding litigation in civil and commercial matters, while at the same time promotes the effective and timely enforcement of claims in such cases. The entering into force of the new Civil Code on 15th March 2014 – which in many instances reshapes Hungarian substantive civil law – is another special driving factor behind the need for procedural reform to ensure a civil procedural environment the rules of which enhance the enforcement of civil law claims.

The Governmental Resolution expressly prescribes that “[t]he concept and the theses shall be based on the survey of the demands of the civil judicial practice, on in-depth research taking into consideration the Hungarian procedural law traditions, while utilizing the achievements of modern foreign procedural law codifications. The Governmental Resolution emphasizes also that “[f]inally, they [ie. the concept and the theses] shall comply with the requirements set forth by the European Union and international treaties.”

The methodology of the codification is organized in a hierarchized structure, in which the highest decision making body is the Main Codification Committee (in Hungarian: “Kodifikációs Főbizottság”). Its initial task is to decide upon a unified concept of the new code. The work of the Main Codification Committee is supported by the Drafting Committee (in Hungarian: “Kodifikációs Szerkesztőbizottság”, of which the composition is in partial overlap with the Main Codification Committee) and a series of so called theme- and working committees. The Main Codification Committee was set up directly by the Government Resolution. The head of the Main Codification Committee is János Németh, professor emeritus ELTE University Faculty of Law Budapest, whereas its scientific secretary is István Varga, professor of civil procedure and Head of the Department of Civil Procedure at ELTE. The further – ex officio – members of the Main Codification Committee are the Minister of Public Administration and Justice, the President of the Supreme Court, the President of the Judiciary Office, the Attorney General, the President of the Hungarian Bar Association, the President of the Hungarian Notarial Chamber, the Secretary of State of the Prime Minister’s Office responsible for Legal Affairs, the President of the Hungarian Lawyers Association and a high-ranking official of the Ministry of Public Administration and Justice, serving as the organizational secretary of the Main Codification Committee.

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The methodology of the preparation of the codification is divided into two main phases: while the governing principle in the first phase is the bottom-up approach, the second phase takes an opposite direction by following a top-down approach. Both phases are coordinated by the Drafting Committee, which set up the theme and working committees in its decision dated 30th September 2013 (the “**Decision**”).

Pursuant to the Decision, in the first phase the “...*theme committees examining the legal dogmatics, practical problems, and the modern tendencies of the civil procedural law shall start their activities. The theme committees shall – following the preparation of written materials and the discussion thereof at committee meetings – prepare a proposal for decision about preliminary questions that, as a result of survey and research activities in the concerned thematic fields, enable the Drafting Committee to present an appropriately established concept and theses, suitable for the professional and public debate, to the Main Committee.*”

The eight (“A” thru “H”) theme committees are organized around the main topics of civil procedural law and certain current procedural issues and have been set up on September 30, 2013 as follows:

- A. Theme Committee for the Structure of Litigation and the System of Remedies (headed by János Németh);
- B. Theme Committee for the Examination of the Role and Task Allocation between the Judge and the Parties to the Dispute (headed by Tamás Éless);
- C. Theme Committee for the Examination of Problems of Standing and Representation in Civil Law Disputes (headed by Viktória Harsági);
- D. Theme Committee for Costs of the Proceedings (headed by Edit Juhász);
- E. Theme Committee for the Examination of Different Procedural Tracks (headed by Zsuzsanna Wopera);
- F. Theme Committee for Taking of Evidence (headed by Egon Haupt);
- G. Theme Committee for the Applicability of Modern Technologies in Civil Proceedings (headed by Miklós Kengyel);
- H. Theme Committee for International and European Civil Procedure and ADR (headed by István Varga and Imre Szabó).

As for the second phase, the Decision provides as follows: “[f]ollowing the approval of the concept prepared [...] by the theme committees and the Drafting Committee, laying down the main content directions of the codification [...] the full operation of the working committees becomes necessary, who may then act in the direction set by the concept. Due to the content overlaps and the continuity of the work, the majority of the working committees consist of experts having already participated in the theme committees.”

As for the timing, the Governmental Resolution prescribes three main steps and three corresponding deadlines to be kept. According to these, the concept and the theses of the new Code of Civil Procedure shall be prepared by the 2nd quarter of 2014. The public debate of the concept shall take place and be concluded by the 1st quarter of 2015, while the text of the new code shall be elaborated by the 4th quarter of 2016.

As the theme committees have already started their work, and thereby surfaced some major crossroads, we briefly summarize below some of the main issues already at the heart of the discussion.

One imminent issue already identified in the initial phase of the debates is whether the codification of civil procedural law should take a uniform approach, meaning that there should only be one code of civil procedure governing every legal dispute, except for criminal proceedings, or whether the rules of certain special procedure currently regulated in the old code (e.g. administrative litigation, labor litigation) should be separated due to their specific features and codified in a separate code. Another crucial aspect of the “uniformity-diversity” discussion relates to the inner structure of the new code, i.e. whether there should be one all-encompassing type of proceeding or there is a necessity to include in the code different procedural tracks with differing procedural standards (e.g. for small claims on the one and for substantial subject matter values on the other end, or for certain specific subject matters and/or privileged groups of potential litigants).

Regarding the structure of the court system and the remedies available in course of ordinary civil litigation, it has already been much debated which level of the judicial system should be rendered as general first instance forum. In connection with this the question was also raised where and subject to which conditions (if at all) the split of two first instance type (currently: local and district) courts is necessary. Regarding remedies (especially extraordinary ones) a crucial point requiring decision is how a balanced solution between disputed-value-based and special-importance-based admissibility can be reached in order to secure both traditional aims of extraordinary remedies, i.e. individual law enforcement and uniform case law.

In the context of parties and representation the overwhelming subjects of the initial discussions have been standing to sue questions and the problem of class actions. This latter subject’s regulatory preparation will be based on comparative analysis of different procedural traditions and of course on the yields of the European-level discussion of recent years peaking in the recent Commission Communication “Towards a European Horizontal Framework for Collective Redress”.

The codification process addresses already in its initial phase some technical issues. Thus, special attention is paid to the possibilities of utilizing electronic means of communication intra-judiciary as well as between the parties and the judiciary. There seems to be an implied agreement among professionals that a well-positioned introduction of such means into selected stages of the civil procedure could seriously contribute to the timely administration of cases. In this respect the extensive experiences piled up in recent years during the fully electronic administration of payment order proceedings may provide much substantial input. Another – partly – technical issue is the allocation and collection of litigation costs. It has been the recurring subject of discussion and will have to be decided now on a conceptual level, whether the allocation and collection of costs should remain with the courts or better be placed at the tax authority. Various reasons have already been articulated on both sides, but breakthrough has not been achieved yet.

Regarding alternatives to ordinary state civil procedure, the revision of the regulation of arbitration, as the principal substitute of ordinary civil litigation have already entered the discussion. While Hungarian arbitration law is in many instances in compliance with the UNCITRAL Model Law, its codification dates back to 1994. Furthermore, extensive judicial practice, respective recent legislation, as well as international and European developments require the review and possibly the updating re-codification of this field of procedural law. In addition to arbitration, problems of mediation are also on the agenda – unsurprisingly also with a view to the evolving European legislative activity (ADR-Directive, ODR-Regulation).

Various views have already been articulated regarding the introduction of mediation in the ordinary course of civil litigation and opinions within the committees widely differ on the necessity and usefulness of court-integrated and out of court mediation and their respective regulatory needs. In this context there is an ongoing comparative debate reflecting different regulatory approaches such as a rather forced (e.g. United Kingdom) or a more relaxed (e.g. Germany) embedding of mediation in civil litigation.

Another conceptual question relates to the body of non-contentious matters (procedural types with special regulations amount currently to more than hundred). Although the new codification aims at concentrating primarily on the rules of legal disputes, it cannot be avoided that the process touches upon the topic of non-contentious cases. The main question in this respect is on the one hand the technique with which the rules of the new Code of Civil Procedure shall be rendered as subsidiary source of non-contentious matters, and on the other hand deciding, to what extent the new code should contain detailed rules. The relationship between the numerous non-contentious matters and the main source of civil procedure has been one of the main demands articulated by basically all segments of legal practice.

Finally, numerous issues have already been raised regarding the way of handling necessary intersection points between domestic civil procedure and international (first and foremost EU law) instruments regulating certain fields of civil procedure, e.g. jurisdiction with regard to the Brussels I-recast, different levels of judicial assistance in the field of service and evidence taking and further the new, direct procedural instruments. These instruments will play a continuous crucial role in the codification process: In the current preparatory phase the discussion focuses on the level of sources of law, e.g. on the necessity of the inclusion of a separate chapter in the new code defining the points of intersection between international, European and domestic procedural regulatory instruments. Equally, questions on a conceptual level arise in connection with the nature of the “new generation” of European civil procedural regulations with primary and direct regulatory content. In the respective theme committee’s initial view one of the main tasks of the codification process will have to be the ensuring of effective application of regulatory contents relating to cross border civil matters both in a global and a regional (European) sense. One possible way to achieve this – and thereby furthering the awareness of this dynamically evolving field of procedural law – could be the introduction of a specially elaborated chapter in the new code dedicated to the respective international and European instruments and their interfaces with domestic procedural law.